

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

FILED

FEB 16 2012

WILLIAM B. GUTHRIE
Clerk, U.S. District Court
By Deputy Clerk

BRIAN KRUSE,

Plaintiffs,

vs.

OHIO CASUALTY CORPORATION,
OHIO CASUALTY INSURANCE COMPANY,
LIBERTY MUTUAL INSURANCE COMPANY,
and AMERICA FIRST INSURANCE COMPANY.

Defendants.

Case No.: **CV 12 - 073 - RAW**

NOTICE OF REMOVAL

In accordance with the provisions set forth in 28 U.S.C. § 1441, *et seq.*, notice of removal is given as follows: Ohio Casualty Corporation, Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and America First Insurance Company, remove this action from the District Court of McCurtain County, Case No. CJ-2012-3 ("State Court Action"), to this Court pursuant to 28 U.S.C. §§ 1332 and 1441, *et seq* and LCvR 81.2. Pursuant to 28 U.S.C. §1446 and LCvR81.2, a copy of the District Court Docket Sheet is attached hereto as Exhibit "1" and copies of all documents filed or served in the State Court Action are attached hereto as Exhibit "2".

1. The Plaintiff alleges breach of contract and bad faith by Defendants for allegedly failing to pay uninsured motorist benefits pursuant to an insuring agreement between Plaintiff and Defendant Ohio Casualty Insurance Company.

2. This cause was filed in the District Court of McCurtain, State of Oklahoma on January 3, 2012. Defendants were served with the Petition on January 12, 2012.

3. In accordance with the Oklahoma Pleading Code, Plaintiff has prayed for judgment in excess of \$10,000.00 for actual damages and damages in excess of \$10,000.00 for punitive damages. The case stated by the Petition was not removable.

4. However, on February 6, 2012, counsel for Defendants received “other paper” from Plaintiff’s counsel wherein it was ascertainable that the case was one in which was removable in that the amount in controversy exceeds \$75,000.00. See Exhibit “3”. A post-suit written settlement demand may be considered an “other paper” for purposes of § 1446(b). See, *Martin v. Mentor Corp.*, 142 F.Supp.2d 1346, 1349 (M.D. Fla. 2001); *Rodrigues v. Alea London Ltd.*, 2008 U.S. Dist. Lexis 47757.

5. Pursuant to 28 U.S.C. §1446(b), Defendant has filed this Notice of Removal within 30 days of ascertaining the case was removable.

6. The District Court of McCurtain County, State of Oklahoma, the court in which this action is pending, is located within this Court’s jurisdiction.

7. Removal of this action is proper under 28 U.S.C. § 1441, *et seq.*, because this Court has original diversity jurisdiction over this matter, given that:

a. **Amount in Controversy:**

i. The amount in controversy exceeds \$75,000.00, exclusive of interest or costs. Plaintiff has alleged Defendants breached the insurance contract and acted in bad faith and damaged Plaintiff in excess of \$75,000.00. On February 6, 2012, Defendant first learned through a writing or other paper from Plaintiff’s counsel that the amount in controversy far exceeded \$75,000.00 wherein Plaintiff claims to be damaged in the amount of \$1,500,000.00. See Exhibit “3”.

ii. Plaintiff asserts his medical damages are approximately \$35,000.00. Additionally, Plaintiff asserts he has scarring, permanent disfigurement, and continued soreness, pain

and discomfort as a result of the underlying automobile accident. He alleges he has had to hire an assistant to help with duties around his home and business. Plaintiff has demanded payment of \$500,000.00 in UM coverage and \$1,000,000.00 for damages relating to his alleged bad faith claim.

iii. Subsequent to receiving the writing wherein the amount claimed to be in controversy was \$1,500,000.00, Defendants' counsel confirmed in a telephone conference with Plaintiffs' counsel that in fact the amount in controversy was \$1,500,000.00.

b. Diversity of Citizenship:

i. Upon knowledge, information and belief, and as asserted in Plaintiff's Petition filed in McCurtain County, State of Oklahoma, Plaintiff is a resident of Idabel, McCurtain County, Oklahoma.

ii. Defendant Ohio Casualty Corporation is an Ohio corporation with its principal place of business in Fairfield, Ohio.

iii. Defendant Ohio Casualty Insurance Company is an Ohio corporation with its principal place of business in Fairfield, Ohio.

iv. Defendant Liberty Mutual Insurance Company is a Massachusetts corporation with its principal place of business in Boston, Massachusetts.

v. Defendant America First Insurance Company is a New Hampshire corporation with its principal place of business in Keene, New Hampshire.

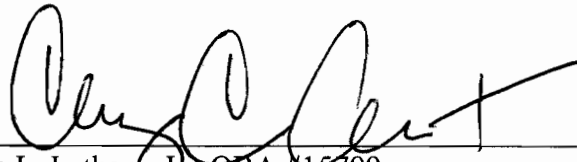
Accordingly, there is complete diversity of citizenship in this action, and this case is removable on that basis.

8. Written notice of the filing of this Notice of Removal is being promptly given to Plaintiff and a Notice of Filing of Notice of Removal is promptly being filed with the clerk of the District Court of McCurtain County, State of Oklahoma as required by 28 U.S.C. § 1446(d).

For the reasons stated above, Defendants Ohio Casualty Corporation, Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and America First Insurance Company remove this action from the District Court of Sequoyah County, State of Oklahoma, to this Honorable Court.

Respectfully Submitted,

LATHAM WAGNER STEELE & LEHMAN, P.C.



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Attorneys for Defendants Ohio Casualty

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Liberty Mutual Insurance Company, and America

First Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2012, a true and correct copy of the foregoing instrument was placed in the U.S. Mail with proper postage affixed to the following:

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